

March 25, 2009

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REGULAR_ITEMS: _____

RAY'S_TRANSPORTATION_SITE_PLAN_(09-02) _____

MR. ARGENIO: Next is Ray's Transportation site plan on Argenio Drive. The application proposes change in use to convert the former lumber yard to a railroad tie product transportation station. The plan was previously reviewed at the 25 February, 2009 planning board meeting. That's not right, is it? You guys weren't here, were you in February? I think you were on the agenda and you asked to get off the agenda or some such thing.

MR. ROSENWASSER: That was earlier, I believe we were on the agenda.

MR. ARGENIO: Sir, can you state your name for the stenographer?

MR. ROSENWASSER: Stewart Rosenwasser for the applicant.

MR. VIEBROCK: Chris Viebrock for the Chazen Companies, engineer.

MR. ARGENIO: My point is you guys have never been formally before us.

MR. ROSENWASSER: I will apologize for the February 25, there was a mixup in the communication, we were not aware whether it was our fault we were not aware it was on.

MR. ARGENIO: Mr. Rosenwasser, we did have some issues during that too, I think we canceled one meeting, it had snowed.

MR. ROSENWASSER: It snowed, we withdrew one meeting, it snowed one meeting, in any event, we're all here and

we're ready.

MR. ARGENIO: Want to tell us?

MR. ROSENWASSER: I will, why don't you just go over the site plan and then I want to talk about some of the things and address some of the issues raised last time.

MR. VIEBROCK: Well, the site is accessed off Argenio Drive, property consists of essentially two properties, lot 45.1 and 45.2 consisting of approximately 9 acres, the property was the old Stephenson's Lumber site and the applicant has purchased the property and would like to move his operations currently from the Walsh Avenue over to this site. And the plan doesn't consist of any new structures, no site improvements, the only things shown on this plan are outdoor storage of railroad ties and metal fasteners that are associated with the railroad ties that would be removed from the railroad ties that are located, metal fasteners are over here and the railroad ties are on the asphalt. Some of the previous concerns we got from McGoey, Hauser & Edsall, the town engineer's office, was some issues with the drainage flow and where the patterns were going for it because there was a concern that the town has property over here and I guess there's some potential well locations over there. So we had revised the plan to show the general drainage pattern, there's no site improvements on the site, we're not planning any additional paving, no improvements to the drainage patterns generally flow towards the existing railroad tracks to the north and any runoff associated in the areas where the railroad ties would be stored would go to the existing railroad tracks to the north. There's a drainage channel that runs I believe to the east along the railroad in the direction. Any runoff that's associated going towards the town property does not have any of the railroad ties located and will not have on the railroad ties located on there for any concern on runoff. And otherwise if any other things shown on

the plan, the most of the railroad ties will be, tried to be stored underneath the existing buildings but there will be some outdoor storage of the railroad ties in temporary storage until they can be sorted, stacked and then moved into the buildings, post and beam buildings that are currently there and trucked off the site and so that's it.

MR. ARGENIO: I want to read this comment from Mark's comments, one area's indicated as, do you have Mark's comments there?

MR. VIEBROCK: Yes.

MR. ARGENIO: One area's indicated as a storm recharge area, this is a concern with regards to potential for creosote laden storm water discharging off the site or infiltrating into the ground with no protective measures. A previous study of creosote is a product, is a complex mixture of chemicals, it's my understanding, and I'm reading Mark's comments for the record, it's my understanding that this type use involves coal tar creosote which may involve approximately 300 plus chemicals in content possibly even thousands, chemicals in the mixture have been identified which may cause harmful health affects. There is a documented concern that creosote products can enter the groundwater and create the potential for contamination and toxicity. As such, the plan's total disregard for containment and treatment allowing the potential for uncontrolled discharge of possibly contaminated storm water runoff is of great concern to this writer. I can tell you this that I have spoken to the Supervisor about this railroad tie business and the railroad ties the creosote is a very big concern, it's a very big concern, I don't quite frankly know much about it but other than the railroad ties, telephone poles they typically don't use them anyway, we used to build walls out of them all over the place cause they wouldn't rot. Adam, do you have something on this?

MR. RODD: Yeah, there's a New York State statute effective January 1, 2008.

MR. ARGENIO: If I can just for one second for your edification just so you're completely up to speed the last meeting the one that you guys didn't come Dominic Cordisco was, we were aware he raised the issue with the, he did a little bit of research and at the end of the meeting during a discussion he said Ray's Transportation is not here and he shared some thoughts on the creosote and I said look when they come we'll address it.

MR. RODD: Well, to the extent you're aware of the law and in accordance with the engineer's comments, it is appropriate to contact the New York State DEC in connection with the proposed use of the property to the extent that it will involve the storage of railroad ties that do contain creosote to see if it's an allowable use.

MR. ROSENWASSER: Well, there's currently no regulations promulgated under 2725-03, none.

MR. ARGENIO: What's 2725?

MR. ROSENWASSER: It's the law referred to by counsel which prohibits the manufacture, sale or use of creosote ties after January 1 of the 2008. There was enough fanfare around its passage, obviously, it's a law designed for environmental purposes, it also requires all of the docks that are built with creosote piles to be removed by 2011, I believe or 2010 and a lot of people think this was just good lobbying by longshoremen who needed work and so it was vigorously attacked. And there's also a fair amount of dispute as to the science on the health hazards of creosote that have been used for some time but I'll leave that to another forum. As far as Ray's Transportation just so

you understand what he does, we don't consider this a change in use, its still a lumber yard, all he's really selling is lumber, it's not open for retail use, he does not manufacture, use or sell within the State of New York. What Ray's Transportation does and correctly note that the railroad is exempt because they are required to use railroad ties.

MR. ARGENIO: I didn't know if they were or weren't but sure seems there's a lot of railroad ties.

MR. ROSENWASSER: We're exempt under the law specifically and to be honest with you the railroad ties have to be disposed of because he buys from class 1 railroads which are commuter railroads and their requirements are much higher so these railroad ties are disposed of, they're just pulled up and thrown in the right-of-way of the railroads.

MR. ARGENIO: That's lawful?

MR. ROSENWASSER: That's what they do, the law requires that they be disposed of now in appropriate landfills or in some other way consistent with DEC regulations. But what he does is he buys them, he brings them to a site currently for the last 12 years here in New Windsor and he has operated without any violation, he sorts them, he grades them, he bundles them and ships them off site. Now he did prior to the enactment of this law have two people that he sold to within the State of New York, he obviously doesn't do that since January 1, 2008 in compliance, all the other things that he sells which is all lumber, by the way, just lumber, it's in the form of railroad ties, he ships them off site and they're sold at the point of the delivery. They are not sold in the State of New York for use, he does not use them here, he does not manufacture them here. The graded ones that are not salable he takes to co-generation plants outside the state for disposal, so what he's doing is really sort

of being a necessary component of the railroad's disposal, he doesn't dispose of them for the railroad, this is a separate business he does for sale outside the state, people don't come there and say I want to buy a bundle, he doesn't sell them to Lowes or Home Depot, doesn't sell them in the State of New York so we do not believe he is in any way in violation of the spirit or the language of this law in any way. And he's continued to operate here in New Windsor since January 1st of 2008 without and DEC's been on his site as far as to address some of these comments.

MR. VIEBROCK: The recharge, I actually I disagree with a comment that says that there will be drainage going towards of runoff that may contain creosote, we specifically--

MR. ARGENIO: Let me interrupt you, what I would like to do is I just I would like to make just one thing with you, Mr. Rosenwasser, I want to be careful in that we have from Mark's associate Eric who's very capable here and certainly if there's something that he needs to defer till Mark gets back we can do that but you have Mark's comments there, yes?

MR. VIEBROCK: Yes.

MR. ARGENIO: What I was just going to suggest is that I don't, again, we're a board here but I think the biggest concern from the town level and I know he's got a facility down on Walsh Road he appeared before this board about that facility quite a few years ago I think I was part of the board when--

MR. ROSENWASSER: '06-07.

MR. ARGENIO: The big concern is the leachate and the town does have two wells back there that are not active right now but in the event of water needs in the future they may choose to activate the wells, let me just

finish, as an extension of your comment, insomuch as the DEC does not have any laws that regulate this it seems as though you're implying that they wouldn't take exception to that and I'm okay with that. Adam, can we, what are the mechanics and we have done this before, I think I'm pretty sure, what are the mechanics of consulting or contacting the DEC somehow with this to see, have them send us a letter saying--

MR. DENEGA: A recommendation you mean?

MR. ARGENIO: Yeah.

MR. DENEGA: Even if they don't guide it by law but a recommendation.

MR. ARGENIO: Right, everybody's off the hook, they say it's okay, Ray's Transportation is off the hook, Mr. Rosenwasser is off the hook and the town is off the hook and it might be okay but I mean they stopped using them for a reason. Go ahead somebody.

MR. ROSENWASSER: Well, they did stop for whatever reason they felt appropriate they stopped using it but we're not in violation of this law, these ties exist in the State of New York, they are here in the State of New York and if Ray's Transportation who employs 35 people here in the town and just wants to move from a very short distance from where he currently operates he can ameliorate some of your terms by covering, simply by covering to avoid any leachate problem that you think there might be and the drainage is not towards your well field as demonstrated by the elevation.

MR. ARGENIO: I don't know where exactly the wells are.

MR. VIEBROCK: Even the recharge area, for example, the recharge is actually behind, this is the new I guess couple years back Stephenson's built this other building that was part of that construction and on

recommendation by Mr. Edsall was to provide drainage where we thought was the drainage and on the topo we provided it and anything south and there's areas of some broken up asphalt, some down south here by the recharge, we specifically placed the areas where we would be putting the railroad ties on the other side of the drainage divide to make sure that everything drained towards the existing railroad tracks, not towards the, anything draining to the storm water recharge would be some piles of some metal fasteners, not the creosote.

MR. ARGENIO: I'm a minority partner in the two properties next door and I don't even know where the wells are, I know they're back there from as a kid being back there on dirt bikes and such but I know there's, I think there's two of them and they're back there. Who has any thoughts?

MR. SCHLESINGER: I have a question and I sure as heck don't want to belittle the issue of the creosote because that's as obviously concern to us for different reasons, but did you not say in essence it's still a lumber yard?

MR. ROSENWASSER: When we submitted this and looked at all the uses, this is not something we need, we believe we need any kind of change of use or permit to operate, this is a lumberyard, all we're doing is selling.

MR. SCHLESINGER: Why are you here?

MR. ROSENWASSER: Because we did what was suggested to us and we did have a meeting with the town attorney and with the Supervisor before even coming here and we're just submitting--

MR. SCHLESINGER: The issue of the creosote?

MR. ROSENWASSER: I don't know that it was so much

that.

MR. ARGENIO: I think you guys are here by statute, Mr. Rosenwasser, unless I'm mistaken.

MR. ROSENWASSER: For site plan approval.

MR. ARGENIO: By statute under our laws for site plan approval, start piling things up and making piles, people driving by are going to make a phone call.

MR. DENEGA: Mark does reference this in the beginning of the comments as a change in use, although I haven't reviewed the code myself and his description of the project he references a change in use.

MR. ARGENIO: Okay, so lumberyard is A-13 under the Town Code and this use is classified as a B-3 use so as I said, it's by statute.

MR. SCHLESINGER: Okay.

MR. ARGENIO: Howard and Danny, you guys have any thoughts?

MR. BROWN: I'd like to get the state's definition on the creosote.

MR. ROSENWASSER: Well, if we're in violation of the statute we're in violation but we don't believe we are, this is specifically run in a way since January and it was run before and again it only had two New York businesses that he dealt with and sold within the state which he does not do, he does not have one customer that he sells one railroad tie or any associated within the state, they're taken off in trailer trucks, removed, these things would lay on the ground and be poached by people and there'd be no control over what happened to them, we believe this use is completely not only consistent but it's a beneficial use because these

things are not going in the ground, they're leaving the state, they're either going to a co-generation plant or being put to use somewhere where the law does not prohibit it.

MR. ARGENIO: Mr. Rosenwasser, I will say this again, you could very well be right about the law, I'm not an attorney and I won't pretend to be an attorney, that's what he does.

MR. ROSENWASSER: We did speak to Mr. Cordisco.

MR. ARGENIO: My sole concern was the leachate, that's my sole concern and it may not be an issue, maybe an issue, I don't know, I know one thing I know, I don't know enough about it to be able to say it's this or it's that. I know enough about it to be able to say I think it's a concern. Danny?

MR. GALLAGHER: I agree, I don't think the selling was the issue more or less the leaching.

MR. ROSENWASSER: As I read your minutes from your last meeting, the concern was that this was a use that was in violation of this new statute as of January 1, 2008 that and the fact that we weren't here were the two primary concerns last time.

MR. ARGENIO: I share that with you in all candor.

MR. ROSENWASSER: Yeah, that was the two concerns, I didn't see much in the minutes that dealt with the leachate, we know in speaking with the engineer that that was an issue and speaking with the Supervisor that's always been a concern regarding this and that's when the site plan was prepared in terms of placement of the product, the drainage trying to get as much covered as possible, it's possible to cover more with tarps which he does now, we have pictures.

MR. ARGENIO: Yeah, you brought up a good point, Mr. Engineer, in that there are buildings there that are open and that's--

MR. ROSENWASSER: And storage is under there.

MR. ARGENIO: I think it should be, I mean, if it's, if the DEC will allow this I think that we should seriously look at that, the storm water running underneath that so the runoff doesn't come in and perc through and run out.

MR. DENEGA: One concern as Mark and I were discussing this was the some of the items that you said are tarped as opposed to being under a structure and that could be somewhat of a concern the maintenance of the tarping and the converting on and off, you know, you flip it over, you may put it back on upside down, now the rain water's sitting in what used to be in the bottom.

MR. ARGENIO: Mr. Rosenwasser, I want to say to you too that this concern is not something that was made up overnight, yes, we have a problem back there now in that there's a plume, that was a plume, some sort of subsurface contamination, I don't know what type of contamination it is that was traced back to Dennison Monarch down the road, a business that's long gone, apparently they were washing some, cleaning filing cabinets with some chemical and it was fairly innocuous or what I assume to be fairly innocuous and it got in the ground and it's migrated and it's been detected in those wells and that's the genesis of this whole thing, actually, that's not the genesis, just trying to be proactive and on top of things is the genesis of this whole thing, no more, no less.

MR. ROSENWASSER: That's all certainly appropriate, you know, we don't have significant doubt that we're not in violation of the law in terms of the addressing the concerns about ameliorating the possibility of leaching

that can all be addressed, you know, I think in terms of what we have designed and what further steps can be taken in terms of coverage.

MR. ARGENIO: But by what, storing them in a structure?

MR. ROSENWASSER: Well, storing them under structures to the amount to the extent that the structures permit them, I mean, there's quite a bit of, but in all honesty, not every, I won't represent to you that all the railroad ties can be stored underneath, they're not in his current facility and DEC is down there now and they were doing their storm water waste management permits, now DEC is there and they're certainly aware and he's got piles of these ties outside that he sorts, bundles, he covers some of it and there's not as much coverage on the site he's on now what he would have here, not anywhere near and he's a hell of a lot closer to the river where he is now.

MR. ARGENIO: And your proposal I guess this proposal from what I've seen here I would call it a depot, is that right, like depot for railroad ties, bring them in and ship them out?

MR. ROSENWASSER: Sells them to out of state and delivers them out.

MR. ARGENIO: This project is within a 500 foot distance of New York State 32 and must be referred to the county planning, I'm sure you're aware of that. You know what I think, I think that you need to take those comments with you, Mark's comments and I think you need to take a look at them, you should address the storm water issue and I believe that we should, is it appropriate, Adam, for us to contact the DEC with this or is it more appropriate for the applicant to?

MR. RODD: Either one.

MR. ARGENIO: What do you guys think?

MR. SCHLESINGER: I think that we should.

MR. GALLAGHER: Absolutely, I think we should.

MR. BROWN: Yes, we should.

MR. ARGENIO: I think we should do that, just to get direction on this. And you know what, Mr. Rosenwasser, if everything's okay then it's fine, I mean, oh, Mark has it here too, I didn't, based on the information received from the planning board there appears to be regulatory and/or permitting authority for this use by the DEC, further clarification of this issue should be received from the applicant and we heard--

MR. ROSENWASSER: There is no permitting authority from DEC, it's only they permit the disposal, shall be disposed of in this state under 2725-03 being the statute we cited last time was 2725-03 regarding use, manufacture or sale in the state, it was a concern that it was being sold here.

MR. ARGENIO: It's leaving.

MR. ROSENWASSER: It's all sold outside the state and leaving here, it's not used so there's no and no regulations have yet been enacted under this section.

MR. ARGENIO: It would seem that based on what you're saying that first issue goes away pretty quickly and that's almost a non-issue.

MR. ROSENWASSER: Yeah, you're either in violation of the statute or you're not. If you're looking to dump these somehow to or take down a wall you can't do that without doing it in accordance with what DEC set out some approved place where they're disposed of appropriately but there's not something that the DEC

has to permit, I mean, if he went alongside the railroad, picked them up and put them on the truck and went out of state it doesn't involve the DEC at all.

MR. ARGENIO: It is noted that the property consists of two separate tax lots, the line is depicted on the plans. It is not normal practice for a site plan to be split with two tax lots, the board should discuss the need for accommodation of the lots as part of this application. What's the status of that, Eric, can you share some thoughts on that? It would seem you have two separate lots here.

MR. VIEBROCK: Same ownership, naturally you can do a lot consolidation as part of the whole process here.

MR. DENEGA: It's standard practice to do that, it doesn't always happen with every application but it's recommended, I don't think it's mandatory but it's recommended.

MR. ARGENIO: I think you should do that.

MR. BROWN: Yes.

MR. ARGENIO: Danny, consolidate the lots?

MR. GALLAGHER: Yes, absolutely.

MR. ARGENIO: It's in keeping with our past practice, this board's past practice.

MR. ROSENWASSER: Consolidated as a condition of approval of the site plan?

MR. ARGENIO: Yes, it should be relatively innocuous.

MR. ROSENWASSER: Yes, just following a deed.

MR. ARGENIO: Mr. Rosenwasser, Myra says that the

information would have to go to her and she would do the assessor office to combine the lots.

MS. MASON: It has to go through the assessor's office.

MR. ROSENWASSER: It would be a condition of approval, not something we'd do in advance.

MS. MASON: But when you're ready to do that please bring it to our office and we'll bring it to the assessor and take care of the paperwork.

MR. ROSENWASSER: Absolutely.

MR. STACKHOUSE: Ray Stackhouse, Jr. vice president of Ray's Transportation. Just concerning the two lots it's always been two lots, we kept the two lots and we just figured maybe in the future we might want to rent half of it out, that's the reason we kept it two lots, I don't know, you guys are saying that you want to combine it, I don't know why.

MR. ARGENIO: Ray, I think the only reason is because it's been the past practice of this board is when an applicant occupies an entire piece of space it's always cleaner from a town point of view and tax point of view to have the whole thing as one lot. But I understand your point that you may want to rent part of it at some point in time, maybe I'll speak with Mark, no, I will speak with Mark about it and see if there's any issue with that but there is a reason we do it.

MR. STACKHOUSE: Whatever we have to do we'll do but that's the reason we left it two lots.

MR. ARGENIO: I can understand it.

MR. ROSENWASSER: So we wouldn't have to have two uses on one lot.

MR. ARGENIO: Let me have Mark review it and but Mr. Rosenwasser that's been our practice to try to clean things up.

MR. ROSENWASSER: It's certainly an easy enough thing to do if it becomes necessary to do.

MR. STACKHOUSE: Thanks.

MR. ARGENIO: Okay, what else do you guys want from us tonight? You have to go to county. Eric, did you speak to Mark about the state of fitness of these plans at this point in time relative to them being able to go to county?

MR. DENEGA: I don't think, I think in Mark's, I thought he mentioned it in here, yeah, he does comment number 5 he references must be referred to Orange County Planning, I don't think he will have an issue sending it the way it is now. There's obviously going to be some changes in accordance with his comments.

MR. ARGENIO: The sum and substance of what's there will be similar to what will be the final version at this point we'll get that off to county. Who does this DEC thing, Adam?

MR. ROSENWASSER: Just so we know what exactly is going to be referred to DEC and to answer what issue?

MR. RODD: Whether the proposed use which I understand it consists of storing at least some of these railroad ties.

MR. ROSENWASSER: Bringing them on site, storing them, well, not storing, well, it's a rolling, this stuff is not stored there for any length of time.

MR. ARGENIO: Store it, roll it.

MR. ROSENWASSER: Stuff goes in, comes, goes.

MR. RODD: It's going to be placed on the property for some period of time and the DEC and if you're right, again, I'm not the DEC, you're not the DEC and I think their regulations as they're written, I mean, there isn't the language this does not apply to them on site for any period of time, doesn't say that in those words, it's simply just to clarify with the DEC that the proposed use is not violative of this law as written.

MR. ARGENIO: No, not that law, that it's not an environmental issue where it's going to leach into the ground and cause a problem whether it's regulated or not so that if it is going to leach into the ground it's going to cause a problem I think Mr. Rosenwasser relative to the law has been pretty clear, I think you and Dominic have to figure that out, certainly sounds clear to me I think but again it's yours, you're the attorney, I think the main concern is that just the leaching of the creosote, I don't know if it's water soluble, I don't know if it's oil based, I don't know anything about it, just that you don't see them around anymore. Am I speaking for everybody?

MR. SCHLESINGER: Yeah.

MR. ROSENWASSER: I think if you get into the science of creosote, I mean, DEC would give an advisory opinion as to the efficacy of what he's doing vis-a-vis the creosote, you're going to get into some science there, this could turn into a significant science project.

MR. ARGENIO: You know, this board we tend not to get into all that business, we tend not to, I mean, I'm not going to mention any other towns. We tend not to get hung up on stuff like that but I want to make sure that you guys are clear and we're clear on this so there's no issues.

MR. DENEGA: Mr. Chairman, just look to simply, if you request that they verify there's no other permits required for the type of storage for this material and potentially request a recommendation on the containment, temporary containment of the material to prevent any hazardous affects on the environment, I think that should somewhat address what your concerns are in the letter to the DEC.

MR. ARGENIO: I think you're pretty close there, don't you guys think?

MR. SCHLESINGER: That's good.

MR. ARGENIO: I think you're pretty close there. What else would you like from us?

MR. ROSENWASSER: I don't think, I'd like to ask you for something else but I think we're premature but you know that's, I just want to be clear on exactly what we're doing because there was some misunderstanding.

MR. ARGENIO: It's got to be tied down and it's got to be tied down at that's it.

MR. VIEBROCK: There's going to be a circulation for SEQRA?

MR. DENEGA: That's under number 4 there DEC the Department of Health.

MR. VIEBROCK: Thirty days for lead agency?

MR. ARGENIO: Yes, Myra, you help Jen with that.

MS. MASON: Once we get that stuff from you then we'll send it out for the lead agency.

MR. VIEBROCK: You'll have it tomorrow.

MR. ARGENIO: Okay, thank you.

MR. ROSENWASSER: Again, I apologize for any inconvenience it may have caused at your last meeting.

MR. DENEGA: Is this off a state road? Is that not a state road?

MR. ARGENIO: No, it's at the end of the road where my office is.

MR. DENEGA: That's not close to 32?

MR. ARGENIO: It's within 500 feet of 32, that's why it's going to--

MR. DENEGA: I didn't know if you referenced DOT.

MR. ARGENIO: No, I don't think so.

MR. VIEBROCK: Railroad is between 32.

MR. ARGENIO: Railroad splits it in half.

MR. DENEGA: Okay.

MR. ARGENIO: I'll accept a motion that we circulate lead agency coordination letter.

MR. SCHLESINGER: So moved.

MR. GALLAGHER: Second it.

MR. ARGENIO: And we're going to include, Adam, part of this motion is that we're going to include authorization to Adam to write that letter.

MR. SCHLESINGER: So moved.

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MR. GALLAGHER: Second it.

MR. ARGENIO: Motion has been made and seconded. Roll call.

ROLL CALL

MR. BROWN	AYE
MR. GALLAGHER	AYE
MR. SCHLESINGER	AYE
MR. ARGENIO	AYE